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CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1943.

No. 817

RAYMOND E. BEEGLE, DOING BUSINESS AS BEEGLE
TIE SERVICE COMPANY,

Petitioner,

vs.

CLAUDE A. ROTH (SUBSTITUTED FOR CHARLES M. THOM-
SON), AS TRUSTEE FOR CHICAGO & NORTH WESTERN RAIL-
WAY COMPANY, AND SHARON STEEL CORPORATION,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

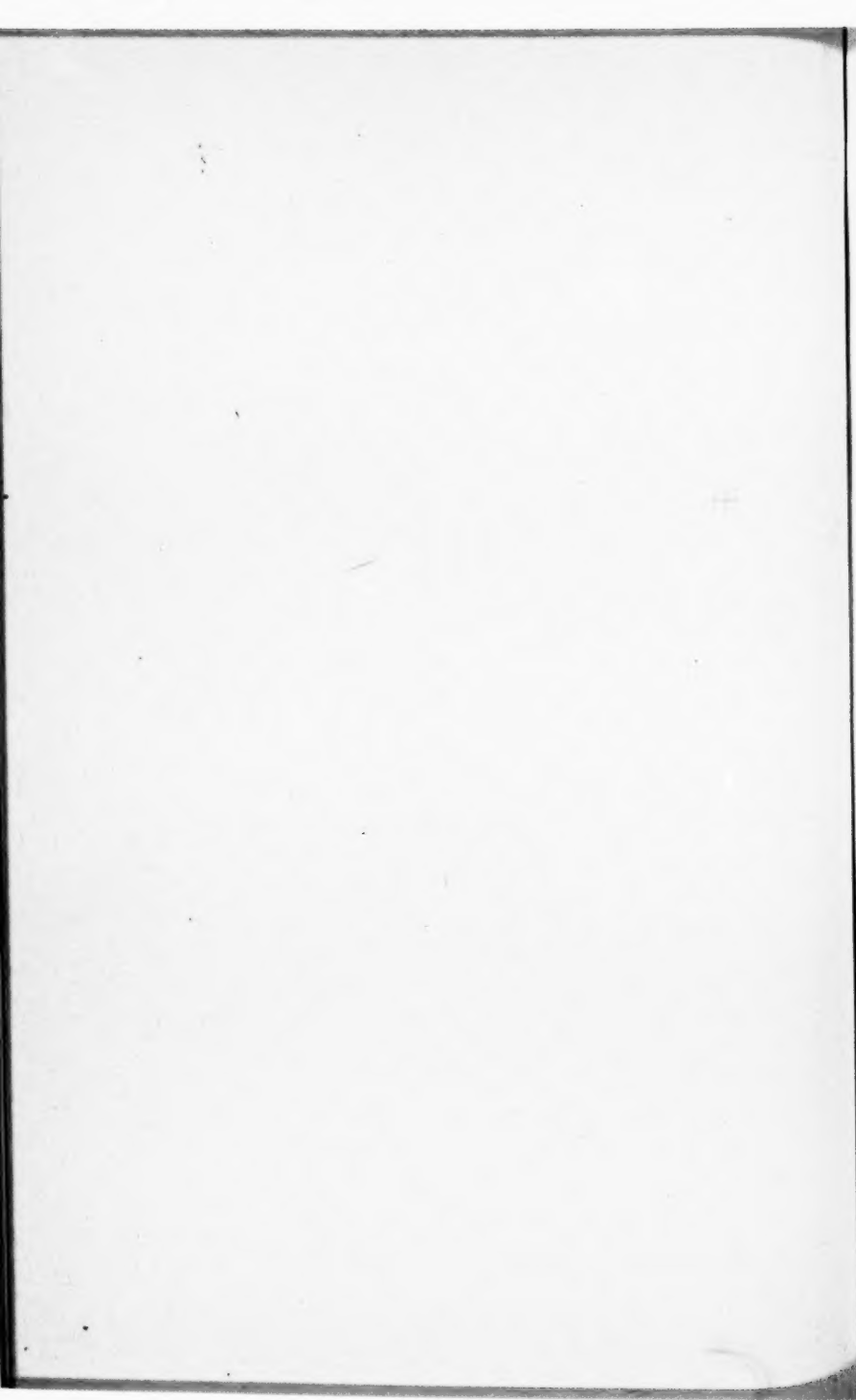
REPLY BRIEF OF PETITIONER.

MAX W. ZABEL,

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Petitioner notes that respondent¹ has placed the trial judge's Memorandum Opinion and the Findings of Fact in sequence in the Appendix of its brief so that the two can be conveniently compared. Petitioner hopes that your

1. "Respondent" means Sharon Steel. The respondent Roth is liable only if the patent is valid and infringed under Count I. His liability is to be handled in answering Question 6 (Pet. 24, 30 and 54).

honors will compare the trial judge's statements on pages 33 and 34 of Respondent's Brief with the Findings of Fact and Conclusions of Law which he subsequently signed,—Findings of Fact 2a, 5a, 5b and 13a having been added at petitioner's request. This comparison will show that some twenty Findings of Fact are conclusions and find no basis in the trial judge's decision. These Findings of Fact were not considered of sufficient importance by the trial judge to mention in his disposition of the case. They were written by respondent's counsel and approved as submitted by the trial judge. They tend to make the case irreversible.

Yet it is principally in reliance upon *these* Findings of Fact that respondent asks your honors to deny the Petition for Certiorari.

**Respondent's Brief Justifies Granting
Certiorari on Reason 5, Question 5¹:**

As to Question 5, the petitioner and respondent are clearly at an issue of law. They do not misunderstand each other,—for the respondent contends that if it is bound by the Settlement Agreement, still the construction of the claims of the patent in suit is a "question of infringement" and not dependent upon the understanding of the parties to the Settlement Agreement as to the scope of the claims acknowledged by them to be valid (Res. Br. p. 16). The Seventh Circuit Court of Appeals agreed with the respondent (R. 1165, Par. 2), for it held that prior art not considered by the Patent Office or the parties at the time when they were incorporating the acknowledgment of validity into the Settlement Agreement could be used to narrow the claims and vitiate the acknowledgment of validity. Petitioner contends that the true rule is that the

1. Pet., pp. 29, 46 and 24.

understanding of the parties as to the scope of the claims at the time they incorporated the acknowledgment of their validity into the Settlement Agreement controls.

Whether petitioner's position is "utterly unsound" or "obviously repugnant to common sense" or "very absurd * * *", as contended by respondent (Res. Br. p. 16), is not an issue on this Petition for Certiorari. We are solely interested in knowing whether or not another Circuit Court of Appeals applied the rule for which the petitioner contends.

In the recent decision of *Nachman Spring-Filled Corp. v. Kay Mfg. Co.*, 139 F. (2d) 781, 59 USPQ 349, CCA 2d (Nov. 1943), the Second Circuit Court of Appeals declined to interpret patent claims so as to vitiate an acknowledgment of validity contained in a contract,—saying that the defendant cannot escape "the obligations of its agreement, by adopting contrivances which any mechanic skilled in the art would recognize at a glance would be obvious substitutes for those disclosed in the claims."

Comparing the patented and presently accused devices shown on page 10 of the Respondent's Brief, "any mechanic skilled in the art would recognize at a glance" that the accused device was an "obvious substitute" for the patented device. But the Seventh Circuit Court of Appeals read "L-hook" into "terminal", "angular member", "angulate member" and "primary terminal" of claims 1, 2, 3 and 4 respectively of the patent *in suit as if there had been no acknowledgment of the validity of the claims in the form in which they were written*. This is exactly what the Circuit Court of Appeals for the Second Circuit declined to do in the Nachman case, and this truth is not impaired by the fact that the contract in the Nachman case may have contained illegal clauses. Such clauses are not in the Settlement Agreement here.

Rule of this Court 38, 5(b) clause 4, does not require that Question 5 be "important". Impairing the obligation of contract, however, is important.

**Respondent's Brief Justifies Granting Certiorari
on Reasons 4 and 2, Question 3¹:**

Under this Reason 4, petitioner contends that the respondent was a joint adventurer with the Sharon Railway Supply Company in getting the infringing order in 1935 which became the subject of the Settlement Agreement and that respondent is bound by the Settlement Agreement even though it did not execute it or know anything about it. In this matter, the trial judge has found for the respondent on the facts for he said in his Memorandum Opinion at R. 985-986, "It is highly probable * * * that the defendant Sharon Steel Corporation assisted Sharon Railway Supply Company, Inc. in getting the much discussed order of 1935 for tie irons from the Pennsylvania Railroad," and this was carried into Finding of Fact 13a (R. 990) at petitioner's request. The Findings of Fact are not more explicit, but the fact statements of the Petition commencing with the second paragraph on page 7 through line 8 of page 9, correctly show that not only was respondent engaged in a joint enterprise with the Sharon Railway Supply Company in getting the Pennsylvania Railroad business, but the two were engaged in a joint enterprise in getting the tie iron business of other railroads.

The facts being as they are, what does Pennsylvania law decide as to the liability of the respondent? Outside of saying that *Nolan v. Doyle*, 338 Pa. 398, 13 Atl. 2d 59 (1940) is not in point, a conclusion which petitioner will leave to your Honors without further discussion, respondent makes little attempt to relieve itself of liability as a joint ad-

1. Pet., pp. 28, 27, 43, 37, and 23.

venturer. The fact statements on page 21 of respondent's brief are wrong,—see Misstatements 10 to 13, *infra*, pages 17, 18.

The statements in the second to the last paragraph on page 20 of Respondent's Brief are not understood. The granting of certiorari on Reasons 4 and 2 is not dependent upon conflicting decisions of other circuits or supreme courts, see Rule of this Court 38, 5(b) clause 2. Reason 4 stands or falls on whether or not the Supreme Court of Pennsylvania would probably find that the facts set forth by the trial judge in Finding of Fact 13a and other facts constitute a joint adventureship with consequent liability upon the respondent.

**Respondent's Brief Justifies Granting
Certiorari on Reason 1, Question 1¹:**

Respondent avoids petitioner's contention that the Motion for Summary Judgment with respect to damages resulting from respondent's using tonnage to get petitioner's customers and create a monopoly was wrongfully granted. Respondent does this by pretending that Reason 1 and Question 1 are confusing.

Petitioner's principal Brief makes the following clear. Petitioner took the testimony of Hetu, Howard Wellman, George Wellman, Jones, Shaughnessy, Gray, Lamneck and Owen for the purpose of showing that respondent had knowledge of the Settlement Agreement at the time that it took over the Sharon Railway Supply Company. In the course of taking these depositions, petitioner learned that the respondent had injured the Sharon Railway Supply Company by using tonnage to get its biggest customer, the New York Central. There was also a pretty clear inference that the respondent got the Pennsylvania Railroad account from petitioner by the same method. Peti-

¹ Pet., pp. 25, 31, 22.

tioner then made some investigations in Chicago and amended its Bill by adding paragraph 19 to the Complaint under Count V.

Testimony as to this charge was excluded at the trial of Part 1. On December 29th, concurrently with filing the Motion for Summary Judgment, respondent requested a Bill of Particulars, (R. 955) which was filed on January 22, 1942 (R. 956). *Instead of amending the Motion for Summary Judgment to cover the matter set forth in the Bill of Particulars, paragraph 20 of the Complaint, respondent answered and denied the charges (R. 957). Paragraph 20 of the Complaint never really came within the scope of the Motion for Summary Judgment. It would seem that this act of answering the charges would constitute an election so far as Count V is concerned, which election would prevent granting the Motion for Summary Judgment on this second cause of action in Count V.*

At the time of the trial judge's Memorandum Opinion, January 28, 1943, therefore, petitioner not only had not had any opportunity to introduce any evidence on the monopoly charge of Count V, but had never even had an opportunity to make an offer of proof.

The trial judge granted the Motion for Summary Judgment on the ground that the petitioner "has no possibility of establishing the case he pleads * * *." This is not a valid ground for granting a Motion for Summary Judgment when the parties have joined issue on a question of fact.

The Seventh Circuit Court of Appeals recognized this, but as to Count V, became confused because Count V contains two causes of action. Upon returning from the taking of the depositions in Texas, petitioner's counsel decided that there was enough evidence of respondent's having deliberately taken or concealed its absorption of

the Supply Company under the guise of a sale in order to avoid the Settlement Agreement and again test the patent by selling the Pennsylvania Railroad, to warrant a charge in the Complaint. Petitioner therefore added paragraphs 17 and 18, Count V, to the Complaint, which charged that the respondent *intentionally* took over the Supply Company so as to reduce competition and destroy the value of petitioner's Settlement Agreement with the Supply Company.

Thereafter, petitioner added paragraph 19 to Count V which charges that the respondent uses tonnage to get the Chicago & North Western Railroad and the Burlington Railroad tie iron accounts away from the petitioner in order to get a monopoly,—a second cause of action.

The Seventh Circuit Court of Appeals noting that the trial judge found in his own Memorandum Opinion that respondent had no knowledge of the Settlement Agreement, found that paragraph 18, requiring actual intent to avoid the Settlement Agreement, could not be sustained,—and apparently affirmed the trial judge on the merits.

But the Seventh Circuit Court of Appeals then went ahead and decided that the allegations of paragraph 18, (and inferentially Count V's monopoly cause of action in paragraphs 19 and 20 although not mentioned) were not sufficiently definite to support a cause of action.

Petitioner has formally abandoned Count V, paragraph 18. This leaves Count V, paragraphs 17, 19 and 20, and the question is whether or not these paragraphs taken with the Complaint as a whole, including paragraphs 15 and 16 of Count IV, are sufficiently definite to state a cause of action under the Sherman and Clayton Acts. This is squarely presented by Question 1 (Pet., p. 22) and Reason 1 (Pet., pp. 25 and 31).

The respondent has made no attempt to answer Reason

1. On pages 31 through 36, petitioner argues that paragraphs 17, 19 and 20 are sufficiently definite to state a cause of action under the old rules, and a fortiori under the new rules and cites cases to support the position. The respondent, on pages 23 to 28 of its brief, seems to rely on the Findings of Fact which it wrote in support of Count V and does not consider whether or not paragraphs 17, 19 and 20 are sufficiently definite to state a cause of action. The case of *Federal Trade Commission v. Wough Equipment*, 15 Federal Trade Commission Decisions, 232 at 245 is distinguished on the ground that there were "positive promises or assurances of increased traffic and threats of withdrawal of traffic." *The evidence showed that there were such promises,—it was not alleged in the bill.*

The respondent has seventy-five per cent of the United States tie iron production and respondent would like to show why. A reading of the Record from R. 995 to R. 1015 will throw some light on what petitioner can prove.

Respondent's Brief Justifies Granting

Certiorari on Reasons 3 and 2, Question 2¹:

Respondent seeks to avoid petitioner's contention that the elements of the transfer of assets from the Sharon Railway Supply Company to respondent constitute a merger under Pennsylvania law by saying that the trial court found as a fact that "There was no merger of the two companies *de facto* or otherwise" (Finding of Fact 14). *This is not a statement of fact,—this is a statement of law. The respondent cannot preclude this court from finding out whether the facts establish a merger under Pennsylvania law by having a trial judge find no merger and then by declining to incorporate the actual facts into the formal Findings of Fact.*

¹ Pet., pp. 28, 27, 37, 23.

The facts as to this transaction are correctly detailed on pages 9, 10 and 11 of the Petition,—indeed, so correctly that the only criticism that respondent could make of them relates to a formal entry of “Goodwill” appearing in the Sharon Railway Supply Company balance sheet. This is explained *infra* in Misstatement No. 9 at page 16. The facts are clear and sensible. Jones and Shaughnessy first entered into an oral contract to convey the assets to respondent, which in the course of carrying out the contract got control of the Supply Company, dissolved it, and continued the business itself. The cases of *Commonwealth v. Merchants National*, 323 Pa. 145, and *Helvering v. Metropolitan Edison Co.*, 306 U. S. 522 are in point. Respondent’s disposition of these cases on page 20 of its brief is so abbreviated that one cannot determine what respondent thinks of the cases. *Daily’s Estate*, 323 Pa. 42, finds a sale on certain specific facts but does not deviate from correct legal principles.

Respondent’s Infringement Argument Ignores the Claims:

Respondent devotes pages 8 to 14 of its brief to an infringement argument in which the claims of the patent are ignored. The claims of the patent read in terms, *i. e.*, giving the words their ordinary meaning,—on the accused devices. Each of the four claims call for a body portion and diverging arms with terminal elements,—all possessed by the accused devices. The four claims differ from each other primarily in the way in which they describe these terminal elements. Claim 1 says “relatively short, inwardly directed terminal” on one of the arms; claim 2, “inwardly directed angular member”; claim 3, “angulate member”; and claim 4, “inwardly directed primary terminal.” Each of the accused devices has a crinkle or angulate member at the end of each arm, just like Figure 4 of the patent, excepting that the accused devices have

these crinkles throughout their length and the angle of the crinkle is closer to 125° than to 90° . The accused devices are not wavy as shown in Ex. C. C. C.,—**They are crinkled, i. e., angular.** The respondent submits that “angular member” or “angulate member” exactly describes an end crinkle on the accused devices, and points out that claims 5 and 6 of the patent call for “L shaped terminals” which would indicate that “angular member” and “angulate member” of claims 2 and 3 cover more than just right angle or L hook terminal. This seems obvious. Claims 2 and 3 are infringed in terms, and it is believed that claims 1 and 2 are likewise.

The Seventh Circuit Court of Appeals read into all four claims “L hook” terminal, and as the accused device’s end crinkles are not ninety degrees but 125° ,—no infringement. Did the Circuit Court of Appeals rightfully do this?

**The Findings of Fact in this Case are
Entitled to no Weight:**

Petitioner’s counsel hopes that this petition is granted if for no other reasons than to give an opportunity to argue Question 10 (Petition, p. 25) which reads:

“Question 10: Should Findings of Fact prepared by respondent Sharon Steel’s counsel and merely approved by the trial judge be accorded the benefits of the third sentence of Rule of Civil Procedure 52(a) in view of the first sentence of Rule 52(a)?”

Respondent resists the Petition for Certiorari primarily on the ground that all of the Findings of Fact are in favor of the respondent. It similarly relied before the Circuit Court of Appeals which honored the Findings of Fact. Yet these Findings of Fact do not represent the thinking of the trial judge at all. On the contrary, the Findings of Fact now relied upon were not mentioned by the trial judge in his own opinion and were not considered by him necessary to reach his decision. These Findings of Fact

were prepared by respondent's counsel after a favorable decision and were simply approved by the trial court in the exact form in which they were finally submitted by the respondent's counsel.

The question for our present consideration is whether or not Findings of Fact 5, 6 through 11, those parts of 12 and 13 not found in the Judge's Memorandum Opinion, 14, 15, and 17 through 26, are entitled to the benefits of the third sentence of Rule of Civil Procedure 52(a). The Petitioner submits that they are not.

The theory of Rule 52(a) is based upon the desirability of having a trial judge make his own findings of fact because they will truly represent his own thinking and be non-partisan, and thereby assist an appellate court which will not have to review an entire record to ascertain the facts. The trial judge may be wrong on the application of the law to the facts but if he can make a fair statement of the facts, then the appellate court will be able to limit its attention solely to applying the "right" law to the facts. The theory of Rule 52(a) is not to enable a trial judge to defeat reversal of his decision by approving facts that are manifestly not his own and ergo not to permit counsel for the winning side to defeat a reversal by getting the judge to approve findings of fact not founded on the record.

More specifically, the question is: is the approval of Sharon's Steel's Findings of Fact by a trial judge equivalent to the preparation of findings of fact by the trial judge himself under Rule 52(a)?

The first sentence of Rule 52(a) says:

"In all actions tried upon the facts without a jury, *the court* shall find the facts specifically and state separately its conclusions of law thereon and direct the entry of the appropriate judgment;"

This duty is imposed on the judge in order that findings of fact will not be subsequently adopted to bolster the judge's decision.

The first sentence of Rule 52(a) is mandatory, and while it may be that the procedure followed in the present case is permissible, still if this procedure is followed, then the findings of fact are not entitled to the benefits of the third sentence of Rule 52(a) because the first sentence of that rule was not complied with.

The Circuit Court of Appeals for the Second Circuit was confronted with exactly the situation occurring in this case, for the trial judge had mechanically signed Findings of Fact subsequent to his rendering judgment. The court pointed out the evils of this practice. The full statement is here set forth:

U. S. v. Forness, 125 F. 2d 928, C. C. A. 2d (1942).

At 942: "We have recently asked for 'brief and pertinent findings of contested matters * * * rather than the delayed, argumentative, over-detailed documents prepared by winning counsel.' *Matton Oil Transfer Corp. v. Tug Dynamic*, 2 Cir. Dec. 1, 1941, 123 F. 2d 999, 1001. Otherwise, we lose the benefit of the judge's own consideration. *In the instant case, a comparison of the findings with the opinion seems to show that the findings proposed by the defendants were mechanically adopted, without consequence that some of the findings made by the district court are not supported by the evidence and not substantially in accord with the opinion.* Such a result can usually be avoided by following what we believe is the better practice of filing findings with the opinion, *when the evidence is still fresh in the mind of the trial judge*, and permitting the parties to file objections under Federal Rules of Civil Procedure, rule 52(b). See *Matton Oil Transfer Corp. v. Tug 'Dynamic,' supra*.

"We stress this matter because of the grave importance of fact-finding. The correct finding, as near

as may be, of the facts of a law suit is fully as important as the application of the correct legal rules to the facts as found. An impeccably 'right' legal rule applied to the 'wrong' facts yields a decision which is as faulty as one which results from the application of the 'wrong' legal rule to the 'right' facts. The latter type of error, indeed, can be corrected on appeal. But the former is not subject to such correction unless the appellant overcomes the heavy burden of showing that the findings of fact are 'clearly erroneous.' Chief Justice Hughes once remarked, 'An unscrupulous administrator might be tempted to say "Let me find the facts for the people of my country, and I care little who lays down the general principles."' That comment should be extended to include facts found without due care as well as unscrupulous fact-finding; for such lack of due care is less likely to reveal itself than lack of scruples, which, we trust, seldom exists."

The duty of the trial judge to make his own findings of fact as required by the first sentence of Rule 52(a) is set forth on pages 316 and 317 of

Federal Rules of Civil Procedure and Proceedings of the American Bar Association Institute, Cleveland, 1938,

where we read at 317:

"So if you look at this reasonably and test this system by the practice that has been followed where it is in force, you find it works out very satisfactorily. There are judges who are like juries; they will render a general verdict on general principles, but if you pin them down to a special finding on particular facts, you have them on the spot, and it prevents a judge of that disposition, in a particular case, from avoiding facing the evidence in the case as he ought to do."

Petitioner therefore submits that Findings of Fact 5, 6, 7, 8, 9, 10, 11, parts of 12, parts of 13, 14, 15, and 17 through 26 are not entitled to the benefits of the third sentence of Rule 52(a).

Principal Misstatements Contained in Respondent's Brief:

Misstatement No. 1 (Res. Br. 10):

"This Exhibit CCC admittedly illustrates *correctly* Exhibit 83 iron * * *." Wrong. At R. 511: "Mr. Lindsey. And I wonder if you and I could agree, Mr. Stone, that it is *fairly* typical of Sharon's special iron accused. * * * Mr. Stone. That is right." Ex. CCC shows the accused iron's crinkles as sinusoidal or wavy. In fact, they are not. *The crinkles of the accused devices are angular and the end crinkles furnish real terminal holding power.* The physical exhibits have not been forwarded to Washington with the Petition. An accused iron picked up at random accompanies the first copy of this brief.

Misstatement No. 2 (Res. Br. 3):

"By agreement of the parties (Finding 4, *infra* 36) the cause was separated into two parts * * *." Wrong. The court order of December 5, 1941 (R. 225) reads: "—on motion of the Court, and there being no objection by counsel for the Plaintiff and counsel for the defendants, cause divided into two sections * * *."

Misstatement No. 3 (Res. Br. 3):

"Before the Trial of Part 1, plenary proofs had been taken on all of the Counts before the case was separated into two parts * * *." Wrong. All pre-trial depositions were completed by November 11, 1941, (R. 64, 83, 99, 112, 46, 185, and 230). Par. 14 f of Count III being the tonnage, unfair competition charge, all of Count IV, and the first cause of action of Count V were filed on November 14, 1941 (R. 157). The second cause of action of Count V, paragraph 19, was filed on December 5, 1941 (R. 224-225). Count V, paragraph 20 was filed January 22, 1942 (R. 956).

Misstatement No. 4 (Res. Br. 5):

"The District Court in finding no infringement stated the two irons are different in structure and different in principle and operation." This statement was written by respondent's counsel and approved by the trial judge. The trial court said "Plaintiff's patent clearly teaches a construction of tie iron having as its principal feature inwardly directed terminals constructed to readily interlock with like terminals on similar irons. * * * This teaching is not followed in the defendant's accused irons."

Misstatement No. 5 (Res. Br. 8):

"The fundamental question of infringement, which controls the disposition of the majority of the questions, is obscured by being treated last in petitioner's order." Misleading! The accused devices infringe all four claims in suit when the words of the claims are given their ordinary meaning. Both respondent and the Seventh Circuit Court of Appeals read into the claims "L-hook". This construction may be permitted if all prior art is available despite the Settlement Agreement. Petitioner contends that the Settlement Agreement forbids this and therefore initially attempts to show who is bound by the Settlement Agreement and to what extent.

Misstatement No. 6 (Res. Br. 9):

"The issue of infringement has been conclusively determined by the concurrent Findings of the District and Appellate Courts, * * *" Misleading. The trial court held that the claims in suit related to interlocking irons, although claim 7 which mentions interlocking was abandoned (Finding of Fact 2a, R. 988), and then, *mirabile dictu*, held that the accused devices did not interlock although he himself pointed out that they did interlock at the trial (R.

405). The Seventh Circuit Court of Appeals found no infringement because it read "L-hook" terminal into each of the claims.

Misstatement No. 7 (Res. Br. 14):

Petitioner has apparently abandoned the claim for relief for alleged breach of the Settlement Agreement." Wrong. See Reason 6, Pet. p. 29, 50 directed to Count II.

Misstatement No. 8 (Res. Br. 19):

After quoting Finding of Fact 14 which states the conclusion that "there was no merger of the two companies *de facto* or otherwise", respondent says "the Appellate court (*infra* 48) said as to the issues involved in Count II that 'An examination of the evidence is convincing that it amply sustains the finding'." This is very misleading. In making the statement Judge Lindley was referring to paragraph 14e of Count III which is dependent upon knowledge of the Settlement Agreement by the respondent. Judge Lindley did not in any way approve any Finding of Fact that there was no merger here. On the contrary, he assumed in disposing of Count II that respondent was bound by the Settlement Agreement. He did not consider the effect of respondent's being bound by the Settlement Agreement on Count I.

Misstatement No. 9 (Res. Br. p. 19):

Respondent says that petitioner's statement "The findings and the record are indisputable that respondent Sharon Steel * * * got all of the good will of the Sharon Railway Supply Company" is "not true * * *." Petitioner's statement is true. The stipulation at R. 143 says nothing as to what constitutes good will. If the court will look at R. 565, it is quite apparent that good will was nothing but an item to offset a \$10,000 capital stock entry. The good

will of the company is represented by the accounts receivable of \$4,415.77 and the unfilled orders and the prospects of getting future business from the Sharon Railway Supply Company customers. This is the good will and Sharon Steel got all of it.

Misstatement No. 10 (Res. Br. p. 21):

"There is nothing in the record showing that Sharon Steel got the Supply Company's order in 1935 for the Pennsylvania Railroad." At the bottom of Ex. 28 (R. 635) on the quotation letter there appears, "Sharon Steel Hoop Co. reply to telegram your office 2-26",—to mention only one instance. The trial court found that the respondent did assist in getting the order.

Misstatement No. 11 (Res. Br. p. 21):

"It is not true that Sharon Steel and the Supply Company jointly submitted a crinkled C iron to the Pennsylvania Railroad in 1935." The letters Exhibits M and O-1 (R. 813) are to the contrary.

Misstatement No. 12 (Res. Br. p. 21):

"It is not true that Sharon Steel financed the insolvent Supply Company." The auditor for the Sharon Railway Supply Company said, "As mentioned on several previous quarterly statements, there is no working capital, the company being financed by one large creditor", Ex. 18, (R. 620). Mason Evans, respondent's treasurer, at the trial said:

"Q. Now, did you mean in that answer that you were actually furnishing any money to the Sharon Railway Supply Company to finance it?

A. Not at all.

Q. What did you mean?

A. It simply was the dollar equivalent of material to permit them to fabricate."

Misstatement No. 13 (Res. Br. 21):

“Finally, it is not true that Sharon Steel profited from the sale of tie irons by the Supply Company as implied by petitioner’s counsel.” Petitioner does not so imply,—petitioner so states. So did Joseph Jones in explaining why the respondent helped the Sharon Railway Supply Company:

“Q. Yes, they were helping us, of course, because they were in the steel business. The more steel sold the better it was for him (McBride).” (R. 123)

Respectfully submitted,

.....
MAX W. ZABEL.

WILFRED S. STONE,
Of Counsel.

Received five copies of the foregoing Reply Brief this
5th day of ~~April~~, 1944.

May

.....
HARRY W. LINDSEY, JR.,
*On behalf of all attorneys for
all defendants.*

